93-499

Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

October Term, 1993

CARL TAYLOR, SR., *Petitioner,*

v.

CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND AND THE TRUSTEES THEREOF, *Respondents.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

AND APPENDIX

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QUESTION PRESENTED FOR REVIEW

DID THE U.S. DISTRICT COURT AND THE COURT OF APPEALS ERR IN GRANTING RESPONDENTS A DISMISSAL ON THE MERITS WHEN THERE REMAIN GENUINE ISSUES OF MATERIAL FACT?

LIST OF PARTIES

The petitioner is Carl Taylor, Sr. The respondents are the Central States, Southeast and Southwest Areas Pension Fund and the trustees thereof.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

OPINIONS BELOW

The relevant opinion of the United States District Court, and the order of the United States Court of Appeals for the Sixth Circuit are reproduced in the Appendix beginning at p. A-1.

JURISDICTION

This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1254(1).

This petition is filed within 90 days of the United States Court of Appeals' order affirming the district court's grant of summary judgment, issued on June 3, 1993.

STATUTES INVOLVED

Petitioner, Carl Taylor, Sr., claims pension benefits pursuant to the civil enforcement section of ERISA

(§ 502 of ERISA, 29 U.S.C. § 1132). Respondent, Central States, Southeast and Southwest Areas Pension Plan, is an Employee Pension Benefit Plan as defined by ERISA, § 3(2)(A), 29 U.S.C. § 1002(2)(A), subject to regulation by ERISA.

STATEMENT OF THE CASE

The petitioner brought an action against the respondents pursuant to § 502 (a)(1)(B) of ERISA, the Employee Retirement Income Security Act as amended, 29 U.S.C. § 2243(a)(1)(B) after he was denied a pension although he had worked as a Teamster for more than twenty years. The petitioner alleged that the respondents made the decision to deny him a pension based upon incompetent and unsubstantiated evidence and that their actions in denying the pension were arbitrary and capricious. The action which was filed on October 27, 1988 alleged that as of November 15, 1985, the petitioner had met all of the prerequisites to qualify for a benefit from the Pension fund, but was denied those benefits. The parties stipulated to an order of dismissal on September 5, 1989 and a rehearing before the respondent trustees "for a full *de novo* rehearing on the issue of plaintiff's entitlement to pension benefits."

After the *de novo* hearing, the respondents again denied the petitioner a pension alleging that the petitioner did not provide adequate support for his contention that he was entitled to benefits. In denying the petitioner his benefits, the respondents declined to give credibility to any of the numerous simple affidavits that contributions had been made on petitioner's behalf. The trustees instead relied upon a deposition of the petitioner's wife which a United States magistrate had ruled that the use of demonstrated the arbitrary and capricious nature of their actions.

The action was reinstated on February 25, 1991. On May 10, 1992, respondents filed a motion for summary judgment. The district court granted the respondents' motion for summary judgment finding that there were no issues of material fact. The district court found that the respondents' actions were not arbitrary and capricious "(e)ven if the trustees improperly relied on the deposition to deny benefits." (Order Granting Defendants' May 10, 1991 Motion for Summary Judgment, p. A-9).

The court of appeals affirmed the district court's order granting summary judgment to respondents.

REASON FOR GRANTING THE WRIT

Certiorari should be granted to review the decision of the district court and the court of appeals because the petitioner was denied his day in court. By deciding that the actions of the respondents were not arbitrary and capricious without a trial, the district court grants the petitioner merely an appellate review rather than a trial to prove his allegations on the merits. The petitioner was never permitted to bring in witnesses to testify and substantiate his claim to a pension. The petitioner provided elementary affidavits which corroborated his claim to pension benefits in the *de novo* hearing before the respondents. The respondents found them without credibility, instead relying upon an illegally taken and unsubstantiated deposition of the petitioner's wife. The actions of the respondents were arbitrary and capricious.

THIS WRIT MUST BE GRANTED AS THE COURTS BELOW HAVE ABUSED THEIR DISCRETION BY GRANTING SUMMARY JUDGMENT ON THE MERITS WHEN THERE REMAINS A GENUINE ISSUE OF MATERIAL FACT

The trial court abused its discretion in granting respondents summary judgment because there remain

genuine issues of material fact. The petitioner applied for a pension from the respondents after over twenty (20) years working as a Teamster driver. The respondents denied the petitioner a pension initially by relying upon an illegally taken, incompetent, unsubstantiated deposition of the petitioner's wife two years prior to petitioner's application for benefits. The petitioner brought an action in United States District Court pursuant to § 502 (a)(1)(B) of ERISA, the Employee Retirement Income Security Act as amended, 29 U.S.C. § 2243 (a)(1)(B) which permits a civil action to recover benefits due under the terms of a plan subject to ERISA. That action was dismissed and the petitioner was granted a *de novo* hearing before the respondents. The petitioner submitted evidence to the respondents which would have entitled him to a minimum 20 year pension. The respondents, nonetheless, denied the pension benefit a second time by arbitrarily and capriciously deciding that affidavits provided by the petitioner were not sufficiently credible and relying on one unsubstantiated deposition of the petitioner's wife.

Issues of fact remain in the case as the petitioner provided affidavits which supported his contention that he was entitled to a full twenty-year pension. Respondents allege that the petitioner is not entitled to a pension because he did not work the requisite number of years. The petitioner alleges that he worked for over twenty-seven (27) continuous years as a Teamster.

By granting summary judgment the petitioner was denied a trial in a federal court. Under these circumstances the petitioner's right to bring an action in federal court is nothing more than a right to an appellate review. The petitioner is a simple man who is fundamentally entitled to a trial on the merits rather than being summarily dismissed.

RELIEF REQUESTED

Petitioner respectfully requests that this Court grant certiorari to review the judgment of the district court as allowed to stand by the court of appeals.

Respectfully submitted,

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DATED: September 1, 1993

APPENDIX TO PETITION FOR CERTIORARI

• • •

OPINION

(United States Court of Appeals — Sixth Circuit)

(Issued June 3, 1993)

(CARL TAYLOR, SR., Plaintiff-Appe''ant, v. CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND AND THE TRUSTEES THEREOF, Defendants-Appellees — No. 92-1350; ON APPEAL from the United States District Court for the Eastern District of Michigan)

BEFORE: MERRITT, Chief Judge;
JONES and NELSON, Circuit Judges.

MERRITT, Chief Judge.

Plaintiff Carl Taylor appeals from a summary judgment upholding the denial of his claim for pension benefits by the Trustees of Central States, Southeast and Southwest Areas Pension Fund ("Fund"), pursuant to Section 502(a)(1)(B) of the Employee Retirement Income Security Act ("ERISA") 29 U.S.C. section 1132(a)(1)(B). The trustees denied his claim for benefits after determining that he lacked the contractually required ten years of contributions to the fund. The Supreme Court held in *Firestone Tire and Rubber Co.* v. *Bruch*, 489 U.S. 101 (1989) "that a denial of benefits challenged under section 1132(a)(1)(B) is to be reviewed under a *de novo* standard *unless the benefit plan gives the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the terms of the plan.*" *Id.* at 115 (emphasis added). The parties agree that the Trustees were given this discretion by the terms of the Central States Fund, so the arbitrary

and capricious standard of review is applicable to their decision. Because the record clearly supports the decision that Mr. Taylor had fewer than ten years of contributions, we affirm the grant of summary judgment.

I.

The Fund is administered by an equal number of employers and employees of the teamster industry appointed by the Board of Trustees. The fund provides pension benefits for teamster employees working under collective bargaining agreements that require their employers to contribute to the fund. Mr. Taylor applied to the fund for benefits on September 24, 1985. His application listed all of his employers from 1948 until 1985.

Article IV, Sec. 4.01(a) of the Plan outlines the eligibility requirements for receipt of the "Twenty-Year Service Pension":

> (a) To become eligible for the Twenty-Year Service Pension, an Active Participant must meet each of the following requirements at the time he stops working in Covered Service or becomes an Inactive Participant:
>
> (1) he must have reached at least his 57th birthday; and
>
> (2) he must have at least 20 years of Service Credit; and
>
> (3) he must have met the Minimum Contribution Requirement.

The "minimum contribution requirement" for Mr. Taylor was ten years of "contributory service," i.e., years in which contributions were made on his behalf.

During the initial processing of his application, the pension fund staff determined that their records showed only 7.675 years of contributions to the fund on Mr. Taylor's behalf. The Trustees reviewed Mr. Taylor's application for the first time on July, 16, 1986. They agreed with the staff findings. The Trustees notified Mr. Taylor that his application had been denied.

In October, 1988, Mr. Taylor filed suit in federal court, claiming that he was improperly denied benefits. He charged a number of errors by the trustees, but we limit our discussion to a review of his dispositive claim that in addition to the 7.675 years of contributions from C.R. Taylor, contributions were made by other employers which would have given him more than 10 years of contributory service.[1] Mr. Taylor claimed that the failure to fully inquire about other contributions rendered the Trustees' decision arbitrary and capricious.

After some preliminary decisions by the district court, the parties stipulated to a voluntary dismissal of the complaint without prejudice on the condition that the Trustees would conduct a *de novo* review of Mr. Taylor's application. The Trustees conducted this review on August 30, 1990. They reviewed all of Mr. Taylor's allegations from his complaint. They checked the funds records as well as those of the Social Security Administration in order to determine Mr. Taylor's union and employment status for all of the years of service

---

[1] **In addition to the 7.675 years of contributions made by C.R. Taylor, plaintiff claims that the following contributions were made or should have been made on his behalf.**

(1) 6.5 years of contributions by Rettberg, Inc. from 1965 to 1971.

(2) 1.5 years of contributions by Sumark Sand, Inc. from 1964 to 1965.

(3) 5 years of contributions by C.R. Taylor from 1958 to 1963.

claimed on his application. They also examined the evidence submitted by Mr. Taylor, primarily in the form of affidavits. The Trustees determined that the evidence as a whole supported their earlier finding that Mr. Taylor was not entitled to the pension. The Trustees issued an eleven page report of the minutes of the meeting where Mr. Taylor's case was considered with detailed explanations of their decision with respect to each question of fact.

Mr. Taylor was notified that his application had been denied again. He then petitioned the district court to reinstate his complaint. This motion was granted by order on February 25, 1991. The district court granted summary judgment in favor of the fund on February 3, 1992. This appeal followed.

II.

We review the grant of summary judgment *de novo* applying the same "arbitrary and capricious" standard as the lower court. *See, E.E.O.C.* v. *University of Detroit,* 904 F.2d 331 (6th Cir. 1990). The Central States plan clearly vests discretionary authority in the trustees. Article IV. Sec. 17 provides: "The Trustees are vested with discretionary and final authority in construing plan documents of the Pension Fund." We are only concerned then with whether material issues of fact remain which if resolved in plaintiff's favor would indicate that the Trustees' decision was arbitrary and capricious. *Miller* v. *Metropolitan Life Ins. Co.,* 925 F.2d 979, 984 (6th Cir. 1991). If not the Trustees are entitled to judgment as a matter of law.

Mr. Taylor fails to satisfy his burden with respect to the Trustees' decision that he had fewer than ten years of contributory service because his evidence disputing this finding does not indicate that the Trustees' decision

was arbitrary and capricious. He argues that the affidavit of Ingeburg M. Rettberg establishes that contributions were made for him by Rettberg, Inc. and Sumark Sand from 1964 to 1971. The Trustees considered this affidavit and were unpersuaded. They note that Mr. Rettberg offered no documentation with this affidavit, nor did he state the basis of his knowledge. The fund records showed that contributions were made on Mr. Taylor's behalf but only to the related health and welfare fund, not to the pension fund. The conclusion by the Trustees that their records were more reliable than Mr. Rettberg's memory does not appear arbitrary and capricious. The only other affidavits offered to support Mr. Taylor's claim that other contributions were made were offered on information and belief. No documentation was offered to counter the plan's records.

III.

Viewing the evidence in the light most favorable to the plaintiff Mr. Taylor has made no showing and raised no issue of fact indicating that more than 7.675 years of contributions were made. Therefore, we AFFIRM the district court's grant of summary judgment for the defendants.

ISSUED AS MANDATE: 6-25-93
COSTS: NONE

ORDER GRANTING DEFENDANTS' MAY 10, 1991 MOTION FOR SUMMARY JUDGMENT

(United States District Court —
Eastern District of Michigan —
Southern Division)

(Dated February 3, 1992)

(CARL TAYLOR, SR., Plaintiff, v. CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND AND THE TRUSTEES THEREOF, Defendants — CIVIL ACTION NO. 88-74360; HONORABLE PAUL V. GADOLA, U.S. DISTRICT JUDGE)

On October 27, 1988, plaintiff Taylor file a complaint against Central States, Southeast and Southwest Areas Pension Fund and the trustees therof ("Central States" or the "Pension Fund"). The complaint alleged claims under the civil enforcement section of the Employee Retirement Income Security Act ("ERISA") section 502(a)(1)(B), 29 U.S.C. section 1132 (a)(1)(B). Plaintiff alleged that as of November 15, 1985, he met all the prerequisites to qualify for a benefit from the Pension Fund but was, nonetheless, denied those benefits. After various proceedings, this court entered an order of dismissal September 5, 1989, and remanded the matter to the board of trustees of defendant Central States "for a full *de novo* rehearing on the issue of plaintiff's entitlement to pension benefits."

The trustees provided a *de novo* rehearing and the plaintiff, accompanied by counsel, appeared before the board on July 16, 1990. On August 30, 1990, the trustees again denied plaintiff's claim. Plaintiff's December 18, 1990 motion to reinstate the case was granted February 25, 1991. On May 10, 1991, defendants filed the instant motion for summary judgment. Plaintiff filed a response January 7, 1992; and defendants filed a reply January 21,

1992. In a March 12, 1991 status conference the parties stipulated to have dispositive motions decided on the briefs. Thus, no oral argument was heard.

BACKGROUND FACTS

Defendant Central States is a Taft-Hartley Trust administered by a board of trustees. Pursuant to the authority granted by the Pension Fund Trust Agreement, the trustees have established a pension plan. The plan provides retirement pensions to employees who have worked in the Teamster industry through collective bargaining agreements that require employers to make contributions to the Pension Fund on behalf of the employees. Because it fits the definition of an employee pension benefit plan under ERISA Section 3(2)(A), 29 U.S.C. SECTION 1002(2)(A), Central States is subject to ERISA regulations.

Plaintiff Carl Taylor, Sr., is a citizen of the state of Michigan who worked as a truck driver for various employers in the Detroit area. He is seeking review of Central State's denial of his claim for a 20-year retirement pension.

APPLICABLE LAW

The parties agree that defendant trustees, as fiduciaries of the Pension Fund, were vested with discretion to construe the terms of the benefit plan. Motion at 11-14; resp. at 3-4. *Thus, the court must use the "arbitrary and capricious" standard in reviewing defendants' decision to deny the claimed pension. Firestone Tire and Rubber Co.* v. *Bruch*, 489 U.S. 101 (1989). The Court of Appeals for the Sixth Circuit has determined that a decision is not arbitrary or capricious if evidence in the record reflects a reasonable explanation for the decision. *Davis* v.

Kentucky Fin. Co.'s Retirement Plan, 887 F.2d 689, 693-95 (6th Cir. 1989).

ANALYSIS

It is undisputed that in order to qualify for the benefits he is seeking plaintiff needed 20 years of service credit, including at least 10 years of contributory service. The first time the defendant trustees reviewed plaintiff's application they determined that he was not entitled to the pension benefits because during the 7.625 years he claimed for employment at C.R. Taylor, Inc., plaintiff worked in a supervisory capacity, not as an employee as that term is defined in the parties' agreement.

After the *de novo* rehearing the defendant trustees again denied plaintiff's request for benefits for additional reasons. First, defendant trustees determined that during the years 1964-1971 plaintiff received a salary, not wages pursuant to a collective bargaining agreement, while working for Sumark Sand, Inc. and Rettberg, Inc. Second, the trustees had no record of contributions made on behalf of plaintiff by Rettberg during plaintiff's service with that company. The trustees found that although some Rettberg employees were participants in the Pension Fund, plaintiff was not one of them. The trustees found a record of Rettberg making contributions on plaintiff's behalf only for a health and welfare plan. Third, the trustees determined that plaintiff had suffered a break in service between 1971 and 1977, a time at which plaintiff was "on a grievance." Motion at 8. The trustees found that no contributions were paid on plaintiff's behalf during that time.

The trustees' second review of plaintiff's application for benefits resulted in an 11-page opinion based on 130

pages of evidence. The court finds that the record made by the board of trustees reflects a reasonable explanation for the decision. Thus, their decision to deny plaintiff's application for pension benefits is not arbitrary and capricious. *Davis*, 887 F.2d at 693-95.

In his response brief plaintiff strongly objects to the trustees' determination that he was a supervisor, not an employee, from 1977 to 1985. Plaintiff vehemently argues that such a determination could not and should not have been made based on plaintiff's wife's deposition testimony illegally obtained in an unrelated 1983 lawsuit.

Even if the trustees improperly relied on the deposition to deny benefits, the court finds that there are additional, independent reasons supplied by the board of trustees to deny plaintiff's request for benefits.

STANDARD OF REVIEW

Under Rule 56(c) of the federal Rules of Civil Procedure, summary judgment may be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." A fact is "material" and precludes grant of summary judgment if proof of that fact would have (the) effect of establishing or refuting one of the essential elements of the cause of action or defense asserted by the parties, and would necessarily affect (the) application of appropriate principle(s) of law to the rights and obligations of the parties. (Citation omitted). *Kendall* v. *Hoover Co.*, 751 F.2d 171, 174 (6th Cir. 1984) (quoting Black's Law Dictionary 881 (6th Ed.

1979). The court must view the evidence in a light most favorable to the nonmovant as well as draw all reasonable inferences in the nonmovant's favor. *See United States* v. *Diebold, Inc.*, 369 U.S. 654, 655 (1962); *Bender* v. *Southland Corp.*, 749 F.2d 1205, 1210-11 (6th Cir. 1984).

The movant bears the burden of demonstrating the absence of all genuine issues of material fact. *See Gregg* v. *Allen-Bradley Co.*, 801 F.2d 859, 861 (6th Cir. 1986). The initial burden on the movant is not as formidable as some decisions have indicated. The moving party need not produce evidence showing the absence of a genuine issue of material fact. Rather, "the burden on the moving party may be discharged by showing — that is, pointing out to the district court — that there is an absence of evidence to support the nonmoving party's case." *Celotex Corp.* v. *Catrett*, 477 U.S. 317, 325 (1986). Once the moving party discharges that burden, the burden shifts to the nonmoving party to set forth specific facts showing a genuine triable issue. Fed. R. Civ. P. 56(e); *Gregg*, 801 F.2d at 861.

To create a genuine issue of material fact, however, the nonmovant must do more than present some evidence on a disputed issue. As the United States Supreme Court stated in *Anderson* v. *Liberty Lobby, Inc.*, 477 U.S. 242, 249-50 (1986),

> There is no issue for trial unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party. If the (nonmovant's) evidence is merely colorable, or is not significantly probative, summary judgment may be granted.

(Citations omitted). *See Catrett*, 477 U.S. at 322-23; *Matsushita Elec. Indus. Co.* v. *Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986). The standard for summary judgment

mirrors the standard for a directed verdict under Fed. R. Civ. P. 50(a). *Anderson*, 477 U.S. at 250. Consequently, a nonmovant must do more than raise some doubt as to the existence of a fact; the nonmovant must produce evidence that would be sufficient to require submission to the jury of the dispute over the fact.

Because there remain no genuine issues of material fact, defendants are entitled to summary judgment.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that defendants' motion for summary judgment is GRANTED.

/s/ PAUL V. GADOLA
UNITED STATES DISTRICT JUDGE

DATED: (2-3-92)

JUDGMENT

(United States District Court —
Eastern District of Michigan —
Southern Division)

(Dated February 3, 1992)

(CARL TAYLOR, SR., Plaintiff, v. CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND AND THE TRUSTEES THEREOF, Defendants — CIVIL ACTION NO. 88-74360; HONORABLE PAUL V. GADOLA, U.S. DISTRICT JUDGE)

This action came on for determination before the Court, Honorable Paul V. Gadola, District Judge, presiding, and the issues having been duly briefed and a decision having been duly rendered.

IT IS ORDERED AND ADJUDGED

That plaintiff take nothing, that the action be dismissed on the merits, and that the defendants recover of the plaintiff their costs of action.

JOHN P. MAYER, CLERK

By: /s/ _____,
Deputy Clerk

APPROVED:
PAUL V. GADOLA
UNITED STATES DISTRICT JUDGE

DATE: (2-3-92)